

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

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PSYCHECEUTICAL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
SHAWN FLEMING and DEF, LLC,	)	<b>Jury Demand Requested</b>
	)	
Defendants.	)	
	)	

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**COMPLAINT**

Plaintiff Psycheceutical, Inc. (“Psycheceutical”) for its Complaint against Shawn Fleming (“Fleming”) and DEF, LLC (individually, “DEF,” collectively “Defendants”), states as follows:

**NATURE OF THE ACTION**

1. This dispute is a breach of contract and patent infringement action that arises out of what should have been a collaborative business venture between Defendants and Psycheceutical to further the essential development of direct application psychedelic drugs for the treatment of mental health disorders. The venture required Defendants to license certain patents and patent applications to Psycheceutical and bring business opportunities to Psycheceutical. The venture’s success depended on mutual trust and the parties honoring the promises they made in written agreements.

2. The venture began with Defendants promising to provide financial backing and licensing opportunities for the development and promotion of inventor Dr. Ronald Aung-Din’s various patented delivery technologies, which are designed to increase the safety and efficacy of psychedelic compounds, in exchange for Dr. Aung-Din assigning ownership of his patents and patent applications to DEF.

3. After Dr. Aung-Din purportedly assigned his intellectual property to DEF, DEF licensed the intellectual property to Psycheceutical, so Psycheceutical could further develop and sell the inventions in the psychedelic market. Fleming also separately agreed to provide business advisory services to Psycheceutical to further the parties' business venture.

4. While Psycheceutical and Dr. Aung-Din honored their promises to advance the parties' venture, Defendants never paid for—and therefore never owned—the intellectual property they purported to license to Psycheceutical. Instead, Fleming took advantage of Dr. Aung-Din's inventions and Psycheceutical's research and development work to seek out his own business opportunities, which he had promised to present to Psycheceutical. Defendants' self-promotion took place all while defrauding Psycheceutical of over \$190,000 in advisory fees.

5. Dr. Aung-Din has now assigned his intellectual property directly to Psycheceutical, yet Defendants continue to promote and sell products in direct infringement of Psycheceutical's patents.

#### **PARTIES, JURISDICTION, AND VENUE**

6. Psycheceutical is a Florida corporation with a place of business at 515 E. Las Olas Blvd., Suite 120, Fort Lauderdale, FL 33301.

7. On information and belief, Fleming is an individual who resides at 8525 Eagle Preserve Way, Sarasota, FL 34241.

8. On information and belief, DEF is a corporation with a place of business at 1827 N. Grant St., Suite 206, Denver, CO 80203.

9. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367, 2201, and 2202.

10. This Court has personal jurisdiction over Defendants and venue is proper because Fleming is the sole owner of DEF and resides in Florida. In addition, the parties consented to personal jurisdiction and venue in this district, because the parties' contracts at issue state that any legal proceedings must be brought in any state or federal court located in this district.

### **FACTS**

11. Psycheceutical is in the business of developing, improving, and commercializing mental health treatments with a particular focus on providing safe and effective delivery of psychedelic-containing pharmaceutical products. Psycheceutical is developing treatment therapies for administering psychedelic products through its licensed NeuroDirect platform, which provides an opportunity for treatment with less side effects. Through its subsidiary company, NeuraSeed, Psycheceutical is expanding its ability to impact the lives of patients by developing new treatment options for patients with brain tumors.

12. The NeuroDirect platform for administration of psychedelic drugs is covered by nine issued United States patents ("the NeuroDirect Patents") that list Dr. Aung-Din as the sole inventor. One of the NeuroDirect Patents is signed ("the '766 Patent"), titled "Topical Regional Neuro-Affective Therapy with Cannabinoids," which issued on July 21, 2020, and lists Dr. Aung-Din as the sole inventor. (Exhibit A.) As discussed below, Psycheceutical is now the owner by assignment of the '766 Patent.

13. Dr. Aung-Din is a medical doctor, who is board-certified by the American Board of Psychiatry and Neurology. He has practiced general neurology and neuro-psychiatry in Florida for over 30 years.

14. For over a decade, Dr. Aung-Din has been inventing novel methods to treat various neurological disorders. He holds 13 U.S. and foreign patents related to direct effects delivery of drugs to treat neurological disorders involving the bloodstream.

15. Dr. Aung-Din is a clinical advisor to Psycheceutical and a named inventor of a separate pending patent application that is assigned to Psycheceutical. Dr. Aung-Din assigned his rights to the NeuroDirect Patents to AfGin Pharma LLC (“AfGin”), a company in which Dr. Aung-Din is a managing member.

16. Fleming is the sole owner and chief executive officer of DEF.

17. In the fall of 2020, Fleming told Dr. Aung-Din that Fleming has substantial production and business contacts that he would be willing to leverage to support and expand the application of the NeuroDirect Patents in the psychedelics’ market. Fleming also promised to provide financial backing to support a newly formed corporation with Dr. Aung-Din called AfGin Holdings Corp (“AHC”) involving the NeuroDirect Patents.

18. On or about September 22, 2020, Dr. Aung-Din and Fleming memorialized their agreement regarding the formation of AHC in a Letter of Intent. A true and correct copy of the Letter of Intent is attached as Exhibit B.

19. Paragraphs 3-5 of the Letter of Intent required Fleming to bring licensing opportunities to AHC and \$356,509.00 of net income as consideration for Dr. Aung-Din assigning the NeuroDirect patents and 40% of the shares in AHC to DEF.

20. Based on Fleming’s insistence and promises to bring business and financial backing to AHC, Dr. Aung-Din assigned the NeuroDirect Patents from AfGin to DEF.

21. DEF recorded the assignment of the NeuroDirect Patents and associated applications with the United States Patent and Trademark Office on December 9, 2020 (“DEF Assignment”). A true and correct copy of the DEF Assignment is attached as Exhibit C.

22. The DEF Assignment expressly states that the assignment is based on valuable consideration from Fleming.

23. Fleming never signed the Letter of Intent, never paid the agreed-upon consideration, and never brought the promised business opportunities to AHC.

24. Upon information and belief, Fleming sells products using technology covered by the NeuroDirect Patents under the name Kanavive. (Exhibit D (kanavive.com) at 2.) The Kanavive website advertises that its products (“Kanavive Products”) utilize the patented NeuroDirect technology.

25. Before actually obtaining assignment of the NeuroDirect Patents, Fleming represented to Psycheceutical that he was the owner by assignment of the patents to induce Psycheceutical into discussions regarding and the eventual licensing of the NeuroDirect Patents.

26. Despite never paying the agreed upon consideration for obtaining the NeuroDirect Patents, Defendants entered a licensing agreement with Psycheceutical on March 30, 2021 (“Licensing Agreement”) whereby DEF, purporting to own certain patents, licensed the rights to those patents to Psycheceutical. A true and correct copy of the Licensing Agreement is attached as Exhibit E.

27. Specifically, the License Agreement defines the licensed patents as two of the NeuroDirect Patents as well as “any other U.S. patents, U.S. patent applications or foreign counterparts which claim priority to any of the foregoing patents or to any applications from which any of the foregoing patents issued, including any and all reissues, reexaminations, divisionals,

continuations, continuations-in-part, and extensions of any of the foregoing issued patents and/or pending applications.” The effect of this definition is that DEF licensed to Psycheceutical all the NeuroDirect Patents.

28. In the Licensing Agreement, DEF represented that it was the owner of the NeuroDirect Patents, and specifically in Section 4 (Representations and Warranties), represented “that it has full right, power, and authority to enter into this Agreement and to perform its obligations and duties under this Agreement” and that “it has full right, power, and authority to grant the license to Psycheceutical.”

29. In accordance with Section 3.1 of the Licensing Agreement, Psycheceutical agreed to pay DEF royalty fees in the amount of ten percent (10%) of gross profit revenues Psycheceutical received from sales based on the NeuroDirect Patents.

30. Section 5.2 of the Licensing Agreement states that “Psycheceutical may terminate this Agreement immediately upon written notice to DEF for a breach by DEF of any representation in Section 4.”

31. On March 8, 2021, Fleming entered a separate Business Advisory Agreement (“Advisory Agreement”) with Psycheceutical. A true and correct copy of the Advisory Agreement is attached as Exhibit F.

32. In the Advisory Agreement, Fleming agreed to provide specific business advisory services to Psycheceutical and Psycheceutical agreed to pay Fleming \$10,000 per month for his services until termination of the agreement on February 28, 2024.

33. Specifically, Section 1 of the Advisory Agreement required Fleming to provide services which may include:

(a) review and advice concerning the technical design of existing and planned products or services;

(b) business development assistance including terms of possible transactions and suggestions during negotiations;

(c) sales assistance through the development of business models and sales strategy;

(d) strategic consulting regarding product planning, market development, marketing, and public relations;

(e) consulting on corporate structure, employee stock option structure, warrant arrangements and intellectual property planning;

(f) introductions to potential strategic partners and other alliance candidates;

(g) introductions to prospective customers for the Company's products or services;

(h) participation and attendance at meetings with the Company's Board of Directors, management, customers, strategic partners, and financing allies, as requested by the Company;

(i) locating and advising on Strategic Acquisitions;

(j) Assistance in the implementation of a branding strategy; and

(k) Introductions to potential investors and finance sources.

34. Psycheceutical paid Fleming the \$10,000 per month compensation, and Fleming accepted the payments but never provided the services he promised in the Advisory Agreement.

35. Paragraph 2 of the Advisory Agreement states that Psycheceutical “shall have the right to terminate the Advisor’s employment under this Agreement at any time for Cause.”

36. Psycheceutical determined that in order to attract additional funding to move forward in its development of psychedelic-containing products, Psycheceutical needed to acquire the rights to the NeuroDirect Patents and opened negotiations with Fleming to purchase the assigned rights to the NeuroDirect Patents as Psycheceutical believed Fleming was the owner by assignment of the patents.

37. Fleming and Psycheceutical engaged in extensive negotiations regarding assignment to Psycheceutical of the NeuroDirect Patents. In exchange for a royalty-free assignment to the NeuroDirect Patents, Psycheceutical CEO, Dr. Neilank Jha, offered Fleming an

extension to the Business Advisory Agreement and associated payments of \$10,000 per month (extension of 20 months after expiration of initial term, but reduced by one month for every day the parties did not have an agreement), 60 million shares in Psycheceutical, and 49% share in a joint venture if Psycheceutical successfully completes Phase 2a studies for NeuroDirect cannabinoid products. On December 18, 2023, Psycheceutical sent to Fleming and DEF a draft binding term sheet.

38. Fleming rejected Psycheceutical's offer, and Dr. Jha reached out to Fleming to see if further negotiations could resolve the issue. In addition to Psycheceutical's original offer, Dr. Jha additionally offered to Fleming Dr. Jha's personal 7.5 million options in Psycheceutical and his 4% ownership in NeuraSeed, a subsidiary to Psycheceutical. In a December 19, 2023 email, Fleming confirmed that he counteroffered Dr. Jha's proposal during the call: in addition to Psycheceutical's original offer and Dr. Jha's offer of his personal stake in Psycheceutical and NeuraSeed, Fleming wanted his Advisory Agreement to be extended the full 20 months and receive a \$10,000 bonus, he wanted his share of any joint venture to be 51%, he wanted Psycheceutical to pay \$75,000 to an attorney for separate legal services, and he wanted an agreement that if Dr. Jha left Psycheceutical before full payment on the extended Advisory Agreement then the NeuroDirect Patent assignment would revert back to DEF. Dr. Jha sent a responsive email that same day accepting Fleming's counteroffer, which was memorialized in Fleming's email, and stated that the parties' respective attorneys could prepare the appropriate documentation memorializing the agreement.

39. But shortly after Psycheceutical accepted Fleming's counteroffer, Fleming tried to back out of the agreement, apparently hoping to extract additional concessions from Psycheceutical. Fleming and DEF refused to sign a draft that memorialized the parties' agreement.



40. While Psycheceutical was considering its options with respect to enforcing its agreement with Fleming and DEF, Dr. Aung-Din informed Psycheceutical that Defendants never owned the NeuroDirect Patents because Defendants had never executed the Letter of Intent or paid the required consideration for assignment of the NeuroDirect Patents.

41. Upon learning that Defendants were not the owners of the NeuroDirect Patents, Psycheceutical terminated the Licensing Agreement and Advisory Agreement with Defendants on January 25, 2024.

42. Dr. Aung-Din then assigned the NeuroDirect Patents from AfGin to Psycheceutical with Dr. Aung-Din receiving valid consideration from Psycheceutical for the assignment.

43. Psycheceutical recorded the assignment of the NeuroDirect Patents and associated applications with the United States Patent and Trademark Office on January 26, 2024 (“Psycheceutical Assignment”). A true and correct copy of the Psycheceutical Assignment is attached as Exhibit G.

44. In early January 2024, Fleming sought confirmation that his monthly payment under the Advisory Agreement had been deposited in his account. Exhibit H.

45. Despite accepting payments under the Advisory Agreement, upon information and belief, during at least December 2023 and January 2024, Fleming engaged in discussions with companies including Eli Lilly to license the NeuroDirect Patents and develop the NeuroDirect technology. This is an example of a pattern of behavior where Fleming has failed to bring business opportunities to Psycheceutical as required by the Advisory Agreement and instead sought to enrich himself and promote his other business ventures.

**COUNT I**  
**BREACH OF CONTRACT – LICENSING AGREEMENT**

46. Psycheceutical restates and realleges all of the above paragraphs as if fully set forth herein.

47. Up until Psycheceutical terminated the Licensing Agreement, it was a valid and enforceable contract.

48. DEF’s promise to abide by the License Agreement’s terms and to fulfill its duties under the License Agreement were material inducements and essential parts of the bargain between Psycheceutical and DEF.

49. Psycheceutical substantially performed its obligations under the Licensing Agreement or has been excused therefrom.

50. DEF breached the Licensing Agreement, at least, by:

(a) falsely representing that it is the owner of patents and intellectual property subject to the Licensing Agreement;

(b) falsely representing “that it has full right, power, and authority to enter into this [Licensing] Agreement and to perform its obligations and duties under this Agreement; and

(c) falsely representing that “it has full right, power, and authority to grant the license to Psycheceutical.”

51. DEF’s breach of the Licensing Agreement was willful, deliberate, in bad faith, and not in the best interests of Psycheceutical.

52. The Licensing Agreement gives Psycheceutical the right to terminate the Licensing Agreement immediately for a breach by DEF of any representation in Section 4.

53. Psycheceutical notified DEF of its breach and terminated the Licensing Agreement on January 25, 2024.

54. As a direct and proximate cause of DEF's breach of the Licensing Agreement, Psycheceutical has been and continues to be damaged in an amount to be proven at trial.

**COUNT II**  
**BREACH OF CONTRACT – ADVISORY AGREEMENT**

55. Psycheceutical restates and realleges all of the above paragraphs as if fully set forth herein .

56. Up until Psycheceutical terminated the Advisory Agreement, it was a valid and enforceable contract.

57. Fleming's promise to abide by the Advisory Agreement's terms and to fulfill his duties under the Advisory Agreement were material inducements and essential parts of the bargain between Psycheceutical and Fleming.

58. Psycheceutical substantially performed its obligations under the Advisory Agreement or has been excused therefrom.

59. Fleming breached the Advisory Agreement, at least, by failing to provide the required Business Advisory Services listed under Paragraph 1 of the Advisory Agreement.

60. Fleming's breach of the Advisory Agreement was willful, deliberate, in bad faith, and not in the best interests of Psycheceutical.

61. Psycheceutical notified Fleming of his breach and terminated the Advisory Agreement on January 25, 2024.

62. As a direct and proximate cause of Fleming's breach of the Advisory Agreement, Psycheceutical has been and continues to be damaged in an amount to be proven at trial.

**COUNT IV**  
**UNJUST ENRICHMENT**

63. Psycheceutical restates and realleges all of the above paragraphs as if fully set forth herein .

64. Psycheceutical paid over \$190,000 to Defendants in royaadvisory fees and received nothing of value.

65. Defendants never owned the intellectual property they purported to license to Psycheceutical under the Licensing Agreement and never provided the services they promised under the Advisory Agreement.

66. Defendants would be unjustly enriched if allowed to retain the over \$190,000 in payments Psycheceutical made to Defendants as promised when Defendants failed to perform their required duties under the parties' contracts.

**COUNT IV**  
**DECLARATORY JUDGMENT – OWNERSHIP OF NEURODIRECT PATENTS**

67. Psycheceutical restates and realleges all of the above paragraphs as if fully set forth herein .

68. The DEF Assignment, assigning the NeuroDirect Patents from AfGin to DEF, was contingent on the valuable consideration of Defendants bringing licensing opportunities and an initial \$356,509.00 of net income to AHC.

69. Because Defendants failed to pay the promised consideration for the DEF Assignment, that assignment is invalid for lack of consideration, and therefore, Defendants never owned the NeuroDirect Patents.

70. Psycheceutical is the rightful owner of the NeuroDirect Patents, based on the January 26, 2024 Psycheceutical Assignment, assigning the NeuroDirect Patents from AfGin to Psycheceutical.

**COUNT V**  
**INFRINGEMENT BY FLEMING OF U.S. PATENT NO. 10,716,776**

71. Psycheceutical restates and realleges all of the above paragraphs as if fully set forth herein.

72. Upon information and belief, the manufacture, use, sale, and/or offer for sale within the United States, and/or importation into the United States, of the Kanavive Products meets or embodies all elements of one or more claims of the '766 Patent.

73. Upon information and belief, the commercial manufacture, use, sale, and/or offer for sale, within the United States, and/or import into the United States of the Kanavive Products prior to the expiration of the '766 Patent infringes, and/or induces, and/or contributes to the infringement of the '766 Patent under 35 U.S.C. §§ 271(a), (b), and/or (c) either literally or under the doctrine of equivalents.

74. Psycheceutical is entitled to damages for Fleming's infringement of the '766 Patent in an amount to be proved at trial.

75. Psycheceutical is entitled to an injunction pursuant to 35 U.S.C. § 283 prohibiting Fleming from infringing the claims of the '766 patent and selling the Kanavive Products until after expiration of the '766 Patent.

76. Upon information and belief, Fleming was aware of the existence of the '766 Patent, was aware or should have been aware the sale of Kanavive Products constituted infringement of the '766 Patent, and was aware Psycheceutical is the owner by assignment of the NeuroDirect Patents including the '766 Patent.

### REQUEST FOR RELIEF

WHEREFORE, Psycheceutical respectfully requests that the Court grant relief as follows:

- A. Enter a final judgment for Psycheceutical against Defendants;
- B. A preliminary and permanent injunction, pursuant to 35 U.S.C. §§ 271 and 283 and Rule 65, Fed. R. Civ. P., enjoining Defendants and their officers, partners, agents, servants, employees, parents, subsidiaries, divisions, affiliate corporations, other related business entities and all other persons acting in concert, participation, or in privity with them, and their successors and assigns, from any commercial, manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of any product that that is similar to or only colorably different from the '766 Patent, before the date of expiration of the '766 Patent;
- C. Award damages, including compensatory and exemplary damages, in an amount to be determined at trial;
- D. Award pre-judgment and post-judgment interest, attorney fees, and costs;
- E. A declaration that Psycheceutical is the rightful owner of the NeuroDirect Patents;
- F. Such other and further relief as this Court may deem just and proper.

### DEMAND FOR JURY TRIAL

Psycheceutical demands a jury trial as to all issues so triable.

Dated: February 13, 2024.

Respectfully submitted,

/s/ Mir Y. Ali

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